

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

BRAY JIBRIL MURRAY,)	
)	
Plaintiff,)	
v.)	C.A. No. 08-264 Erie
)	
PAUL A. ENNIS, et al.,)	
)	
Defendants.)	

MEMORANDUM JUDGMENT ORDER

Plaintiff's civil rights complaint was received by the Clerk of Court on September 22, 2008 was referred to United States Magistrate Judge Susan Paradise Baxter for report and recommendation in accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrates.

The Magistrate Judge's report and recommendation [38], filed on November 30, 2009, recommends that the Defendants' motion to dismiss the amended complaint [31] be granted in part and denied in part. The parties were allowed ten (10) days from the date of service to file objections. On December 17, 2009, Plaintiff filed his objections to the Report and Recommendation [42] and a supporting declaration [43].

After de novo review of the Complaint and the documents in the case, together with the Report and Recommendation and Plaintiff's objections thereto as well as his declaration, the Court concludes that it will adopt the Report and Recommendation in part. Specifically, the Court declines to adopt the Report and Recommendation insofar as it relates to the Plaintiff's First Amendment retaliation claim based on his placement in administrative custody, as the Court finds that there are material issues of fact relative to motivation which render summary judgment inappropriate as to that claim. However, the Court will adopt the Report and Recommendation in all other respects. Accordingly, the following order is entered:

AND NOW, *to wit*, this 5th day of February, 2010,

IT IS ORDERED that the Defendants' Motion to Dismiss the Amended Complaint [31] be, and hereby is, GRANTED in part and DENIED in part as follows:

1. Defendants Hays, Morley, and Marzulla are hereby DISMISSED from this case, due to Plaintiff's lack of intent to include them as Defendants;
2. Defendants Marks, Varner, Barone, Sharon M. Dombrowski, Toski, Grunland, and Overmyer are hereby DISMISSED from this case, due to their lack of personal involvement in any of the challenged actions;
3. As to the remaining Defendants, the motion to dismiss [31] is GRANTED with respect to:
 - (a) Plaintiff's First Amendment claim against Defendants Gill and Nicholson premised on his alleged denial of access to the courts;
 - (b) Plaintiff's equal protection claim regarding his placement in administrative custody;
 - (c) Plaintiff's equal protection claim against Defendant Woodard premised on the rejection of his non-legal correspondence; and
 - (d) Plaintiff's equal protection claim against Defendants Gill, Nicholson, Ireland, and Banta premised on the alleged denial of access to the law library.

Inasmuch as the Magistrate Judge converted said motion to a Rule 56 motion for summary judgment, JUDGMENT is hereby entered in favor of the relevant Defendants and against Plaintiff Bray Jibril Murray with respect to the foregoing claims.

4. As to the remaining Defendants, the motion to dismiss [31] is DENIED with respect to:
 - (a) Plaintiff's First Amendment retaliation claim against Defendants Ennis, Wojcik, Reed, Bill C. Dombrowski, Bense, Nevling, Repko, and Ford relative to his placement in administrative custody;

- (b) Plaintiff's First Amendment retaliation claim against Defendant Woodard relative to the rejection of Plaintiff's non-legal correspondence;
- (c) Plaintiff's First Amendment retaliation claim against Defendants Gill, Nicholson, Ireland, and Banta relative to Plaintiff's alleged denial of access to the law library; and
- (d) Plaintiff's First Amendment retaliation claim against Defendants Ireland, Gill and Banta relative to the alleged false misconduct issued by Defendant Ireland.

The Report and Recommendation of Magistrate Judge Baxter dated November 30, 2009 [38] is adopted, in part, as the opinion of this Court to the extent set forth herein.

s/ Sean J. McLaughlin

SEAN J. McLAUGHLIN
United States District Judge

cm: all parties of record.
U.S. Magistrate Judge Susan Paradise Baxter